

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	FCC 01-157
Universal Service	)	
Multi-Association Group (MAG) Plan for	)	
Regulation of Interstate Services of	)	CC Docket No. 00-256
Non-Price Cap Incumbent Local Exchange	)	
Carriers and Interexchange Carriers	)	

**REPLY COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (“NTCA”) submits the following reply comments in response to comments filed in the above-captioned proceeding.<sup>1</sup> NTCA represents over 500 local exchange carriers (“LECs”) providing access to interexchange carriers (“IXCs”) throughout rural America.<sup>2</sup>

**DISCUSSION**

In its comments, NTCA supported the Commission’s decision not to adopt the Rural Task Force recommendation to impose a freeze on support to incumbent LECs and competitive

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<sup>1</sup> *Fourteenth Report and Order, Twenty-Second Order on Reconsideration (Order), and Further Notice of Proposed Rulemaking (FNPRM), In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, FCC 01-157 (rel. May 23, 2001).

<sup>2</sup> NTCA’s members are also all “rural telephone companies” as defined in the Telecommunications Act of 1996 (the “Act”). 47 U.S.C. §153(37).

eligible telecommunications carriers (“CETCs”) when a competitor enters a rural incumbent’s service area. The Commission concluded that the proposal has significant drawbacks that outweigh any potential benefits that might be obtained by restricting the fund in this manner. NTCA concurred but also reiterated that the Commission’s decisions concerning universal service support mechanisms should not be made on the basis of a mechanism’s fund sizing ability.

The Act’s “sufficiency” requirement is the only lawful measure of the federal fund’s size.<sup>3</sup> Indeed, the Commission is required to define the terms “sufficient” and “reasonably comparable” in a way that can be “reasonably related to the statutory principles, and then assess whether its funding mechanism will be sufficient for the principle of making rural and urban rates comparable.”<sup>4</sup> The Commission is also required to consider the overall impact of its federal funding decisions on the states. As the U.S. Court of Appeals for the 10<sup>th</sup> Circuit stated, the “FCC may not simply assume that the states will act on their own to preserve and advance universal service.”<sup>5</sup> The Commission remains obligated to create some inducement for the states to assist in implementing the goals of universal service.<sup>6</sup>

NTCA also urged the Commission to consider a cost-based portability solution, rather than perpetuate the potential problems associated with allowing competitors to receive the same per-line dollar amount of universal service support received by the incumbent, based on the incumbent’s costs. A CETC should receive sufficient support based on its own costs. Other

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<sup>3</sup> NTCA Comments at 2.

<sup>4</sup> *Qwest v. Federal Communications Commission*, \_\_ F.3d \_\_, WL 864222, 10<sup>th</sup> Cir. (July 31, 2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

commenting parties overwhelmingly agreed that the Commission should reject the proposal to freeze high-cost per loop support upon CETC entry.<sup>7</sup> The Montana Telecommunications Association and the Nebraska Rural Independent Companies stressed that such a freeze would have the unintended consequence of discouraging investment in rural infrastructure and “would affect most the customers in areas that least could afford the negative rate or investment ramifications.”<sup>8</sup> NTCA agrees; “there is no current need for action to control the growth of ILEC support, especially via a freeze that would further cramp the already-capped support for incumbent universal service providers seeking to upgrade their networks to bring advanced services to their areas.”<sup>9</sup>

Only AT&T supported the proposal to freeze incumbent LEC per-line support upon competitive entry. In fact, AT&T suggested that the freeze is necessary not only to mitigate against any precipitous increase in the total high-cost fund, but also because the absence of this freeze “could result in a siphoning of support from other study areas to the study areas subject to competition.” AT&T explains that “this outcome is completely illogical because competition should reduce the need for subsidies, not increase it.”<sup>10</sup> However, this statement is only true if one assumes that competition is viable in these areas -- that all rural markets can support more than one provider. NTCA believes there to be evidence of the contrary.<sup>11</sup> Further, the siphoning

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<sup>7</sup> See, generally, Comments of Small Western LECs, TCA, Inc., NRTA and OPASTCO, United States Telecom Association, GVNW Consulting, Inc., Nebraska Rural Independent Companies, and the Montana Telecommunications Association (“MTA”).

<sup>8</sup> MTA at 2. See also, Nebraska Rural Independent Companies at 3, and GVNW Consulting, Inc. at 2: “Freezing high cost loop support upon competitive entry will stifle the deployment of needed rural infrastructure.”

<sup>9</sup> USTA at 3. See also, NRTA at 2.

<sup>10</sup> AT&T at 3.

<sup>11</sup> See, *The Cost of Competition*, by Dale Lehman, Paper 3 of the NTCA 21<sup>st</sup> Century White Paper Series (December 2000), available at [www.ntca.org/leg\\_reg/white/index.html](http://www.ntca.org/leg_reg/white/index.html).

problem AT&T mentions would be moot should the Commission heed the law and remove the artificial caps on universal service support.<sup>12</sup> Regardless, the Commission should not attempt to solve potential fund size “problem” with an ill-fated policy that may freeze incentives for efficient growth in the rural telecommunications industry.<sup>13</sup>

NTCA supports comments of the other parties urging the Commission “to reform its rules to ensure that, as CETCs proliferate, their support does not exceed their own universal service costs” ... and ... “comply with section 254(b)(3) of the Act.”<sup>14</sup> NTCA also concurs with the statement by the Nebraska Rural Independent Companies that the Commission “should address the issue of stranded costs quickly.”<sup>15</sup> Indeed, NTCA stated in its comments that whatever measure replaces the original recommended support freeze upon CETC entry must concurrently ensure that incumbent LECs “be permitted to make adjustments to the extent that costs associated with the regulatory mandate cannot otherwise be recovered and are above and beyond what can be recovered via company rates.”<sup>16</sup>

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<sup>12</sup> NTCA has consistently opposed any cap on the overall support fund. “Carriers should not be subject to any cap on the mere assumption that the ultimate outcome of this proceeding will lead to a mechanism that reduces the overall support fund’s size but still complies with the statute’s ‘sufficient’ and ‘predictable’ requirement. A cap is particularly inappropriate at this time when consumers through the nation are demanding access to advanced services that require investment in new and costly technology. The Act requires that the Federal support mechanism be “sufficient” to both “preserve and advance universal service. 47 U.S.C. § 254(b)(5). Further, continuation of the cap will force relitigation of that issue as change progresses and will force individual carriers to seek costly administrative waivers to meet customer needs.” *See* NTCA Comments, February 26, 2001, at 3-4, n.8.

<sup>13</sup> USTA further warns that the existing flaws and gaps in the FCC’s policies for CETC support may only result in uneconomic incentives to seek ETC designations. *See* USTA at 2.

<sup>14</sup> NRTA and OPASTCO at 5. *See also*, USTA at 5, MTA at 3.

<sup>15</sup> Nebraska Rural Independent Companies at 6.

<sup>16</sup> NTCA at 5-6.

## CONCLUSION

The Commission should heed the overwhelming response of commenting parties and reject the proposed freeze of per-line support upon competitive entry. A cost-based alternative should be considered, and the issue of stranded investment should be dealt with concurrently.

Respectfully submitted,

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August 28, 2001

## CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, Docket No. 00-256, FCC 01-157, was served on this 28th day of August 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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